

Serial No. 09/655,402
Amdt. Dated February 15, 2005
Reply to Office Action of November 15, 2004

Docket No. K-0214

REMARKS/ARGUMENTS

Claims 1 and 5-24 are pending in this application. By this amendment claims 21-24 are added. Reconsideration in view of the following remarks is respectfully requested.

Applicant sincerely acknowledges the Office Action's indication that claims 8-10, 13-14 and 16-17 define patentable subject matter. However, for at least the reasons set forth below Applicant respectfully submits all pending claims are in condition for allowance.

A. The Office Action rejects claims 1, 5-7, 11-12, 15 and 18-20 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,946,622 to Bojerd, U.S. Patent No. 5,917,811 to Weaver Jr. et al. (hereinafter Weaver), U.S. Patent No. 5,999,816 to Tiedemann Jr. et al. (hereinafter Tiedemann) and U.S. Patent No. 5,603,096 to Gilhousen et al. (hereinafter Gilhousen). The rejection is respectfully traversed.

Bojerd

The Office Action alleges that Bojerd teaches a cellular/wireless system including a macrocell and picocell and the ability to hand off between the two systems. The Office Action acknowledges that Bojerd does not teach "performing a power control such that a transmission power level of said mobile station is not lowered, if said mobile station is determined to be within said soft handoff region and if a soft handoff of said mobile station is required.

Gilhousen

Regarding claim 1, the Office Action asserts that Gilhousen teaches reverse link closed loop power control whereby:

"if the mobile is in a soft hand-off mode, then power control commands are received from two or more base stations at the same time. The general rule for combining the control commands from multiple base stations is that the power is turned up only if all received power control commands agree to turn up the power. Power will be turned down if any of the power control signals instruct the mobile to "turn down". Power will be unchanged if all but one base station command "turn up" and one commands "no change". See column 6, lines 55-65 of Gilhousen.

The Office Action asserts that the above teaching in Gilhousen discloses that three options are available for power control during a soft handoff from any cell to another, i.e., increase, decrease or do not change transmit power. See page 3, lines 4-13 of the Office Action. The Office Action appears to assert that the three options disclosed at least the feature of "the transmit power of the mobile is not lowered during a soft handoff" as variously recited in the independent claims. See page 2, lines 12-15 of the Office Action.

Applicant respectfully disagrees with this characterization. Applicant respectfully submits that Gilhousen, and in particular the cited portion of Gilhousen, explicitly teaches to lower the gain of the base station in other words, column 6, lines 57-58 of Gilhousen discloses power will be turned down if any of the power control signals instruct the mobile to "turn down" if the mobile is in a soft hand-off mode. Thus, Applicant respectfully submits that the Office Action improperly modifies Gilhousen (in contrast to its explicit disclosure) when it eliminates one

condition expressly taught in Gilhousen. As expressly stated in the above-referenced section, Applicant respectfully submits Gilhousen teaches to decrease the gain.

In contrast, Applicant's claim 1 recites performing a power control such that a transmission power level of said mobile station is not lowered, if said mobile station is determined to be within said handoff region and if a soft handoff of said mobile station is required and combinations thereof. Thus, Applicant's claim 1 recites features of performing a power control if a soft handoff of said mobile station is required in a soft handoff region and combinations thereof.

Weaver

The Office Action asserts Weaver provides a system that controls forward/reverse link coverage areas, which depend on power control. Applicant respectfully submits that Weaver uses different, independent procedures to control the forward and reverse link power. In addition, Applicant respectfully notes Weaver is directed to a method and apparatus for measurement directed hard handoff in a CDMA system. Applicant respectfully submits that Weaver is silent with respect to power control methods during a soft handover.

Tiedemann

With respect to Tiedemann, Applicant respectfully submits that Office Action again ignores the express teaching of this reference, which discloses in column 17, lines 51-60n the following (with emphasis added).

Regarding the reverse link power control, the transmission power of the mobile Station is controlled in a closed loop fashion by comparing the received energy of A group of symbols in the reverse link frame to a threshold value. If the received Energy of a group of symbols is less then the threshold value, the mobile station is instructed to increase its transmission power. **If received energy of a group of symbols is above the threshold value, the mobile station is instructed to decrease its transmission power.**

As expressly stated in the above-referenced section, Tiedemann teaches a conventional closed loop control which allows for the control power to be lowered, which is in direct contradiction to the functionality the Office Action alleges Tiedemann supports.

§103 Rejection

a) As stated in MPEP § 2143.01, to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970). Neither Bojerd, Gilhousen, Weaver, and Tiedemann individually, nor the combination of these references discloses at least features of performing a power control such that a transmission power level of said mobile station is not lowered, if a soft handoff of said mobile station is required and combinations thereof as recited claim 1. Therefore, these references do not render Applicant's claimed combinations obvious as alleged by the Office Action.

For at least the reasons set forth above Applicant respectfully submits claim 1 defines patentable subject matter. Claims 11 and 20 define patentable subject matter for at least reasons similar to claim 1. Claims 5-7, 12, 15 and 18-19 depend from claims 1 and 11 respectively, and therefore also define patentable subject matter. Withdrawal of the rejection of claims 1, 5-7, 11-12, 15 and 18-20 under 35 U.S.C. § 103 is respectfully requested.

B. Claims 21-24 are newly added in this Amendment and believed to be in condition for allowance.

C. Statement of the Substance of the Interview:

Applicant sincerely acknowledges the courtesies extended by Examiner D'Agosta to Applicant's representative, Carl Wesolowski, during a January 27, 2005 personal interview.

The substance of the personal interview is incorporated in the following remarks.

During the interview, claims 1 and 5-20 were argued to be allowable over the Gilhousen reference because the Gilhousen reference teaches to lower a transmission power of a mobile station under prescribed conditions during a soft handoff that and thus teaches away from at least features recited independent claims 1, 11 and 20. The outstanding rejection of the pending claims was argued to be in error on at least these grounds, however, no agreement was reached to this point.

No exhibit was presented or demonstration conducted during the interview.

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CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, Carl R. Wesolowski, at the telephone number listed below. Favorable consideration and prompt allowance are earnestly solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
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